

Nadler Explores Supreme Court's Direction on Civil Rights

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WASHINGTON, D.C. – Today, Congressman Jerrold Nadler (D-NY), Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired a hearing on “Civil Rights Under Fire: Hearing on the Recent Supreme Court Decisions.” The hearing examined recent trends in the Court’s civil rights jurisprudence, including a number of decisions which have challenged longstanding constitutional precedent on issues of civil rights.

“While I have always opposed efforts to attack the legitimacy of our Supreme Court or its independence, I believe it is essential to examine the Court’s decisions and what effect they may have on our rights,” said Nadler. “When many of our best minds disagree strongly on the meaning of the Constitution, you need more than an umpire. It is simply false to assume that judges do not interpret and that they are not informed in that process by their knowledge, experience and reason. Congress, therefore, has the duty to correct judicial overreach or misreadings of statutes.”

The United States Supreme Court, the highest tribunal in the nation, began its current term this week and will soon hear a number of civil rights cases on a wide range of issues. A careful review of the Court’s recent opinions suggests a growing rollback of Warren and Burger Court-era precedent. Years of settled law on issues involving race, religion, speech, abortion and the standing to sue have all been unsettled by recent rulings. The effect has been the incremental narrowing of many individual rights granted under the Constitution.

As the final arbiter of the law, the Court is charged with ensuring the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution. The Supreme Court has the authority to invalidate legislation or executive actions which, in the Court’s considered judgment, conflict with the Constitution. The power of “judicial review” gives the Court the crucial responsibility of assuring preservation of individual rights and of maintaining a “living Constitution” whose broad provisions are continually applied to complicated new situations.

Among the recent Supreme Court cases which have dealt blows to civil rights are:

- Ricci v. DeStefano
- Gross v. FBL Financial Services, Inc.
- Ledbetter v. Goodyear Tire & Rubber, Inc.
- Parents Involved in Community Schools v. Seattle School District
- District Attorney's Office v. Osborne
- Ashcroft v. Iqbal

- Bartlett v. Strickland
- Casey v. Planned Parenthood
- Gonzales v. Carhart
- Hudson v. Michigan
- Herring v. United States

Expert witnesses at the hearing were: Armand Derfner, civil rights attorney, Derfner, Altman & Wilborn; Dahlia Lithwick, contributing editor at Newsweek and senior editor at Slate.com; Aderson Francois, Associate Professor of Law, Howard University School of Law; and, Debo Adegbile, NAACP Legal Defense and Educational Fund, Inc.

Below is the text of Nadler's opening statement:

"Today's hearing examines recent Supreme Court decisions affecting the civil rights of all Americans. While the Court has its constitutionally prescribed role, Congress, and specifically this Subcommittee, do as well.

"I want to make it clear from the outset that the purpose of this hearing is not to question the legitimacy of the Supreme Court's place in our system of checks and balances. Whether or not we consider a decision of the Court to be well considered, or clearly erroneous, the rule of law demands that we have a vigorous independent judiciary.

"As Chief Justice Marshall wrote, 'It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule.'

"In Federalist 78, Alexander Hamilton explains the importance of this principal in a system of checks and balances:

The complete independence of the courts of justice is peculiarly essential in a limited Constitution....Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

"For this reason, while I have disagreed with the Court on many occasions, I have always opposed efforts to attack the institution's legitimacy or its independence. Efforts, such as stripping the Courts of their jurisdiction to decide constitutional questions, or efforts through appropriations to block enforcement of such decisions, are an assault on the very rule of law and our constitutional system of government.

“So, for example, while I have watched in dismay as the Court struck down the Religious Freedom Restoration Act on what I believe to be an incorrect reading of the 14th Amendment, and its recent discovery of an individual right to stockpile firearms in violation of the clearly expressed will of the electorate, I recognize that the Court is fulfilling its function. I know some of my colleagues have questioned the Court’s jurisprudence in areas of abortion and church-state relations, and a previous generation thought the Brown decision was wrongly decided. But whatever side one is on any of these issues, the call for massive resistance is misplaced and dangerous to our freedoms.

“Nonetheless, it is appropriate to examine what the Court has done and what the effect of those decisions may be on our rights. Furthermore, it is absolutely correct for the Congress to respond to the Court’s decisions by acting within our own constitutional sphere of authority.

“It would be much simpler if there were clear and easy readings of every law and the application of every constitutional provision. Calling balls and strikes is the job of umpires, but the Justices have a more complicated task. When many of our best minds disagree strongly on the meaning of the Constitution, you need more than an umpire. No matter how often that ill-considered metaphor is repeated, it is simply false to assume that Judges do not interpret and that they are not informed in that process by their knowledge, experience and reason.

“Earlier this year, with the enactment of the Lilly Ledbetter Fair Pay Act, Congress moved to correct the Court’s misreading of a statute. That is an appropriate remedy.

“On constitutional rulings, we have fewer options, but we do need to understand the direction the Court has given us and legislate accordingly. Where we believe the Court’s rulings have gone too far afield, the Constitution provides the remedy of a constitutional amendment.

“With that in mind, I look forward to the testimony of our very distinguished panel of witnesses today. All three branches of government face some really difficult challenges in the years to come. Understanding those challenges is the first step in fulfilling our constitutional mandate.”